

1 PAUL B. SALVATY (SBN 171507)
PSalvaty@winston.com
2 WINSTON & STRAWN LLP
333 S. Grand Ave., 38th Fl.
3 Los Angeles, CA 90071-1543
Telephone: (213) 615-1700
4 Facsimile: (213) 615-1750

5 ABBE DAVID LOWELL (admitted *pro hac vice*)
AbbeLowellPublicOutreach@winston.com
6 WINSTON & STRAWN LLP
1901 L St., N.W.
7 Washington, D.C. 20036-3508
Telephone: (202) 282-5000
8 Facsimile: (202) 282-5100

9 BRYAN M. SULLIVAN (SBN 209743)
bsullivan@earlysullivan.com
10 ZACHARY C. HANSEN (SBN 325128)
zhansen@earlysullivan.com
11 EARLY SULLIVAN WRIGHT GIZER & McRAE LLP
6420 Wilshire Boulevard, 17th Fl.
12 Los Angeles, California 90048
Telephone: (323) 301-4660
13 Facsimile: (323) 301-4676

14 Attorneys for PLAINTIFF
ROBERT HUNTER BIDEN

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **WESTERN DIVISION**

18 ROBERT HUNTER BIDEN, an
19 individual,
20 Plaintiff,
21 vs.
22 PATRICK M. BYRNE, an individual,
23 Defendant.
24

Case No. 2:23-cv-09430-SVW-PD

Hon. Stephen V. Wilson

**JOINT STATEMENT OF
UNRESOLVED DISCOVERY
ISSUES**

Date: October 4, 2024
Time: 9:00 A.M.
Ct rm.: 580 of the Roybal Federal
Courthouse

Complaint Filed: November 8, 2023
Trial Date: December 10, 2024

1 **TO THE HONORABLE COURT**, pursuant to the Court’s September 25, 2024
2 Minute Order (Dkt. No. 75), Plaintiff Robert Hunter Biden (“Plaintiff”) and Defendant
3 Patrick M. Byrne (“Defendant”) (collectively, the “Parties”) hereby submit the
4 following Joint Statement of Unresolved Discovery Issues, in advance of the Informal
5 Discovery Conference scheduled for October 4, 2024, at 9:00 A.M. in Courtroom 580
6 of the Roybal Federal Courthouse in Los Angeles, California.

7 **I. NEUTRAL STATEMENT OF EACH ISSUE IN DISPUTE**

- 8 • Dispute No. 1: Defendant’s Deposition and Court-Ordered Declaration;
9 • Dispute No. 2: Defendant’s Responses to Plaintiff’s Requests for the
10 Production of Documents (Sets Three and Four);
11 • Dispute No. 3: Plaintiff’s Medical Records Production;
12 • Dispute No. 4: Defendant’s Rule 26 Disclosures;
13 • Dispute No. 5: Plaintiff’s Responses to Defendant’s Third Set of Requests
14 for the Production of Documents

15 **II. EACH PARTY’S RESPECTIVE POSITIONS ON THE DISPUTES**

16 **A. Plaintiff’s Positions¹**

17 1. ***Dispute No. 1: Defendant’s Deposition and Court-Ordered***
18 ***Declaration***

19 Prior to the September 18, 2024 Informal Discovery Conference (“September 18
20 IDC”) before this Court, and after weeks of discussions regarding the scheduling of
21 Defendant’s deposition, counsel for Defendant made written representations to
22 Plaintiff’s counsel that Defendant had moved his permanent residence to Dubai, United
23 Arab Emirates (“U.A.E.”), and could not travel to the United States for his deposition
24 because he “was recently notified by the United States DEA that the Venezuelan

25 _____
26 ¹ For Plaintiff, Zachary Hansen, Esq., will appear in person on October 4, 2024, but
27 Abbe Lowell, Esq., who previously argued the deposition issue at the September 18,
28 2024 IDC and resides in Washington D.C., cannot attend because, among other reasons,
he will be observing the religious holiday of Rosh Hashanah that day. In his place, Mr.
Salvaty, also of Winston & Strawn LLP and counsel of record in this matter, will appear
alongside Mr. Hansen.

1 government has a \$25,000,000 on his head.” (See Exhibit 1.) Then, at the September
2 18 IDC, defense counsel made the same representations to the Court, this time on the
3 record: “[Defendant] had been involved in some covert activities in Venezuela, and he
4 was informed by the DEA that there is a \$20 million bounty on his head, and he also
5 had been receiving death threats because of that activity.” (See September 18 IDC
6 Trans., at 7:9-15.) At the September 18 IDC, the Court then ordered Defendant to
7 “submit a declaration as to where he is currently located, as to **whether he has any**
8 **plans to be anywhere within the United States between today and the date the case**
9 **sets for trial** and stating the reason why he cannot return to the United States between
10 now and then and **provide the identifying information and contact information for**
11 **whoever it is that has conveyed to him that he should not return to the United**
12 **States between now and the trial**[.]” (See September 18 IDC Trans., at 18:15-25)
13 (emphasis added.)

14 However, in direct violation of the Court’s Order, Defendant’s court-ordered
15 Declaration does not even mention the DEA, nor does it provide any additional details
16 about his Venezuela claim, and does not provide any identifying information or contact
17 information for anyone sufficient to allow Plaintiff to confirm Defendant’s claims in
18 this regard. Instead, for the first time, and in direct contrast with defense counsel’s prior
19 claims to Plaintiff’s counsel and to the Court, Defendant’s declaration² states that in
20 August 2024, Defendant was in Ghana cooperating with an official with the Ghanaian
21 Ministry of Security who informed Defendant that “criminals in West Africa were
22 cooperating to get me in a position where I could be kidnapped.” Defendant further
23 states that in addition to news about the West African kidnapping scheme, Defendant
24

25 ² Defendant’s Declaration was marked as “Highly Confidential” by Defendant and
26 therefore Plaintiff was unable to attach the actual Declaration hereto without first
27 seeking the Court’s permission to file under seal pursuant to the Stipulated Protective
28 Order (Dkt. No. 63) and there was not enough time between the Court’s Order
scheduling the IDC and the date this Statement was due. As such, Plaintiff’s counsel
will bring a copy of Defendant’s Declaration to the IDC for the Court to review in-
person.

1 was also informed that Venezuela was attempting to kidnap him and had put a
2 \$25,000,000 bounty on his head.” Defendant then states that when he finished his
3 travels he decided not to return to the United States because local police in the United
4 States “cannot provide me with the safety I need for my personal safety”, so he moved
5 to Dubai and does not plan to return to the United States “anytime between now and
6 November 10, 2024.”

7 Accordingly, Defendant also failed to state that he will not be returning to the
8 United States between September 18 and trial, and instead limited his declaration in this
9 regard to just November 10, 2024. Accordingly, defense counsel made several
10 misrepresentations to the Court and Plaintiff’s counsel regarding his DEA claim, and
11 Defendant violated the Court’s order by (1) failing to provide identifying and contact
12 information for whomever informed Defendant of the information which forms the
13 basis of his claims that he cannot return to the United States, and (2) failing to state
14 whether he has any plans to return to the United States between the date of the
15 September 18 IDC and trial. Notably, at the September 18 IDC, defense counsel
16 specifically represented to the Court that “[w]ith respect to [Defendant] coming back,
17 obviously, he’ll be back here for trial[.]” (September 18 IDC Trans., at 8:15-16.)

18 Upon the production of Defendant’s court-ordered Declaration, Plaintiff’s
19 counsel pointed these deficiencies out to defense counsel, who refused to amend the
20 Declaration, insisted on its accuracy, and admitted his misrepresentation with respect to
21 the DEA claim³. (See Exhibit 2.) As such, defense counsel and Defendant have not
22 satisfied either Plaintiff’s or the Court’s inquiries regarding the basis for Defendant’s
23 claims that he cannot return to the United States for his deposition in this matter.

24 Moreover, immediately after the September 18 IDC, Plaintiff’s counsel, Mr.
25 Lowell, requested that Defendant also include in his declaration details which defense
26

27 ³ On September 30, 2024, in an email to Plaintiff’s counsel, defense counsel again
28 admitted that he was “mistaken when I thought the DEA spoke to our client. In fact, it
was the Ghana Security Department that informed our client of the threats on his life.”

1 counsel stated on the record to the Court, including: (1) that Defendant was residing in
2 Dubai on August 20, 2024 when discussions regarding his deposition began (September
3 18 IDC Trans., at 4:6-19); and (2) where Defendant was when he appeared virtually for
4 Plaintiff's deposition on August 16, 2024. In response, defense counsel stated "[w]e
5 are going to send you the declaration the court ordered. We are not required to do
6 anything else." (See Exhibit 3.)

7 Defense counsel also falsely represented to the Court that when Plaintiff's
8 counsel first brought up the scheduling of Defendant's deposition on August 20, 2024,
9 that he was on vacation and "wasn't in any position to deal with it until I got back,
10 which was about two weeks later." (September 18 IDC Trans., at 7:18-21.) However,
11 in defense counsel's August 20, 2024 email in response to Plaintiff's counsel's initial
12 proposal for Defendant's deposition, defense counsel stated he "will be returning to the
13 office on Monday August 26, 2024" and that he would need to discuss the details of his
14 client's deposition with Defendant "when I get back next week[.]" (See Exhibit 4.)
15 This is yet another example of defense counsel's misrepresentations to the Court.

16 With respect to the Parties' applicable research regarding the legality of
17 conducting a deposition in Dubai, at the September 18 IDC, the Court asked defense
18 counsel whether he had performed any research into the laws pertaining to conducting
19 a deposition in Dubai, either in-person or by videoconference, to which defense counsel
20 said he had. (September 18 IDC Trans., at 9:21-10:21.) However, when he produced
21 this "research" to Plaintiff's counsel on September 20 and September 23, defense
22 counsel's research was comprised of two different marketing pamphlets for deposition
23 servicing companies in Dubai that did not contain citations to any laws or legal authority
24 whatsoever, and a third marketing pamphlet for a travel agency advertising tourism in
25 Dubai, which apparently was meant to prove it was safe for U.S. Citizens to travel to
26 Dubai. (See Exhibit 5.) These advertising pamphlets come up as the initial "search
27 results" in a simple Internet search on Google. No other legal research was, or has since
28 been, produced by Defendant's counsel in this regard. None of these promotional

1 materials provide any legal, relevant or reliable basis to confirm defense counsel's
2 claims that a deposition can legally or logistically occur in Dubai for use in a U.S.
3 lawsuit, either in-person or virtually by videoconference.

4 The research Plaintiff's counsel has conducted, however, and that was provided
5 to defense counsel on September 20, 2024, demonstrates that: (1) there are no laws or
6 procedures in Dubai regarding conducting depositions in Dubai for use in a foreign
7 lawsuit, let alone such legal authority which authorizes the same; (2) there is no body
8 of international law which provides any guidance in this regard; and (3) serious safety
9 implications exist for U.S. citizens traveling to Dubai currently (and the region
10 generally). In fact, relevant case law from multiple federal districts indicates that
11 conducting a deposition in Dubai for a lawsuit pending in the United States is not
12 practical and various important factors must be considered. Specifically, *US v. SLH2021*
13 *S.A.*, No. 23-2305, 2023 WL 5146470 (E.D. La. Aug. 10, 2023), involved a deponent
14 employee for the defendant that was located in Dubai. The Plaintiff wished to compel
15 the deponent to appear in Louisiana for his deposition where the action was pending,
16 while the defendant argued the deposition should occur where the deponent resided in
17 Dubai. (*Id.*) The Court ultimately ordered the deponent to appear in Louisiana for his
18 deposition after consideration of the following factors: (1) "**the absence of any**
19 **provisions for the taking of witness evidence for use in another jurisdiction in the**
20 **UAE Code of Civil Procedure**"; (2) "**the U.S. Department of State's warning to U.S.**
21 **citizens about traveling in the Gulf and Arabian Peninsula**"; (3) "given that this
22 Court has been called upon twice to address discovery disputes in this barely five-week
23 old case, the need for court intervention during the deposition appears high. **With**
24 **Dubai's 9-hour time difference ... locating the depositions [in Dubai] renders it**
25 **virtually impossible for this Court to intervene should any issues arise during the**
26 **depositions**"; and (4) the fact that the defendant's counsel of record was located and
27 had his principal place of business in the district where the matter was pending in the
28 U.S. (*Id.* at *6-7) (emphasis added.) All of these factors are aptly relevant in our case

1 because (1) there are no provisions in the U.A.E.'s Civil Code, Code of Civil Procedure,
2 or Evidence Law pertaining to taking depositions in Dubai for use in the United States;
3 (2) as noted below, the U.S. State Department's level 2 warning and designated threat
4 level regarding travel for U.S. Citizens remains in effect; (3) given the repeated,
5 ongoing discovery disputes in this matter and multiple requested IDC's, the chance of
6 the Parties will need Court intervention due to a dispute at the deposition of Defendant
7 is high, and if conducted in Dubai, the Parties would be unable to resolve that issue in
8 a timely manner without requiring a second session of the deposition (and another trip
9 to Dubai); and (4) defense counsel's law firm is located in Westlake Village, California
10 – the same district in which this case is located.

11 Moreover, *In re Outsidewall Tire Litigation*, 267 FRD 466 (E.D. VA 2010), the
12 Court acknowledged that in determining whether it was appropriate to conduct a
13 deposition of a party in Dubai, several factors must be considered, including whether
14 “some facet of Dubai law might operate to hinder or obstruct plaintiffs in taking the
15 depositions in Dubai” (i.e., the Court noting in *U.S. v. SLH2021* that there is an absence
16 of any provisions for the taking of witness evidence for use in another jurisdiction in
17 the U.A.E. Code of Civil Procedure and not being a party to the Hague Convention on
18 Taking Evidence Abroad in Civil Matters, as outlined below), and “whether defendants’
19 conduct in discovery suggests that they or the deponents will be uncooperative or
20 obstructionist if the depositions occur in Dubai.” Once again, both of these factors are
21 aptly relevant here.

22 Plaintiff's research also confirmed that the U.A.E. has: (1) no applicable laws or
23 procedures regarding the collection of evidence in the UAE to support foreign litigation;
24 (2) no applicable laws or procedures available to obtain evidence from a witness in the
25 UAE; and (3) no laws or procedures to enforce a request from a foreign court for witness
26 or documentary evidence in the U.A.E. In fact, from the legal authorities Plaintiff's
27 counsel reviewed on this issue, it is clear that the U.A.E. does not recognize the
28 procedures for depositions in the same manner that courts in the United States do, or

1 other Western countries do. The word “deposition” or “oral testimony” do not appear
2 in the U.A.E.’s Civil Procedure Code (UAE Law No. 11 of 1992), Evidence Law (UAE
3 Law No. 10 of 1992), or Civil Code (UAE Law No. 5 of 1985).

4 Also, unlike the United States, and many other Western countries, such as the
5 United Kingdom and France, the U.A.E. is not a party to the Hague Convention on
6 Taking Evidence Abroad in Civil Matters. As such, the U.A.E. is not bound by
7 international law with respect to the collection of evidence in civil matters in the same
8 way other Hague Convention signatory countries are bound, such as the United States,
9 either for in-person depositions or remote depositions by videoconference. If they were,
10 then their specific agreements and procedures for conducting such discovery in the
11 U.A.E. would be clearly defined. It is not. For instance, in 2018 the Hague Convention
12 released a synopsis of responses from signatory countries to the Hague Convention on
13 Evidence regarding the procedures they recognize and accept for taking evidence by
14 video-link (i.e., virtual depositions). This document clearly defines each signatory
15 country’s accepted procedures. Plaintiff’s counsel has been unable to locate any such
16 set of procedures that the U.A.E. accepts for remote depositions by videoconference.
17 This is concerning because even if Defendant’s deposition were to occur remotely by
18 videoconference while he is in Dubai, Fed. R. Civ. Proc. 30(b)(4) provides that a
19 deposition by remote means is deemed to “take place where the deponent answers the
20 questions.” Which means by conducting a remote deposition with the deponent in
21 Dubai, the Parties would be subjecting themselves to the laws and procedures in Dubai,
22 which, as described above, has no procedures for collecting evidence for foreign
23 litigation. Moreover, Fed. R. Civ. Proc. 28 recognizes that in some countries it is
24 customary not to place a deponent under oath or to take a verbatim transcript. That is
25 simply not an option here and Plaintiff has no legal authority showing Dubai will allow
26 a deposition to occur within its borders under the procedures required in United States
27 Federal Court cases, such as this.

28 Additionally, the document attached as “Exhibit 6” is titled “Rules of evidence

1 including crossborder evidence in civil proceedings Q&A United Arab Emirates” and
2 was prepared by an international law firm, Bird & Bird LLP. Exhibit 6 lists several
3 questions and responses starting on page 8 regarding the U.A.E.’s procedures for
4 allowing evidence to be obtained in the U.A.E. specifically for the purpose of being
5 used in a foreign litigation. The U.A.E.’s response to almost every such question is
6 “The UAE is not a party to the Hague Evidence Convention” or other vague statements
7 confirming the U.A.E. has no applicable procedures or laws authorizing such evidence
8 collection.

9 Finally, there are also safety implications that must be considered as well.
10 Currently the U.S. State Department lists the U.A.E. as a Level 2 threat for U.S. citizens
11 traveling abroad and has issued a travel advisory in this regard citing the “threat of
12 missile or drone attacks and terrorism.” (See U.S. State Dep’t page for U.A.E. travel,
13 *available at* [https://travel.state.gov/content/travel/en/international-travel/International-](https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/UnitedArabEmirates.html)
14 [Travel-Country-Information-Pages/UnitedArabEmirates.html](https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/UnitedArabEmirates.html)). These are unnecessary
15 safety risks that are perhaps the most important considerations, especially in light of the
16 ongoing international conflicts that are occurring in the Middle East (Dubai is located
17 about 100 miles across the Persian Gulf from Iran).

18 Accordingly, Plaintiff maintains that Defendant’s deposition should occur in-
19 person in the United States. “‘Although the federal rules do not prevent plaintiff’s
20 designating any place he chooses for the taking of a defendant’s deposition, the cases
21 indicate that it is presumed that a defendant will be examined at his residence or at his
22 place of business or employment.’” *Willis v. Mullins*, No. CV F 04-6542 AWILJO,
23 2006 WL 302343 (E.D. Cal. Feb. 8, 2006) (quoting *Grey v. Continental Marketing*
24 *Assocs.*, 315 F.Supp. 826, 832 (N.D. Ga. 1970)). If the parties cannot resolve any
25 disputes regarding a party’s deposition, “[t]he Court is permitted to exercise broad
26 discretion in determining the appropriate place for examination[.]” *Turner v.*
27 *Prudential Ins. Co. of America*, 119 F.R.D. 381, 383 (M.D.N.C. 1988). Defendant
28 admitted in his Answer to the Complaint that he is a resident of Florida (Dkt. No. 27, at

¶10), signed his verifications for his discovery responses with “STATE OF FLORIDA, COUNTY OF JUPITER” listed at the top (most recently on August 9, 2024), and, according to a public records search, Defendant owns real property in West Palm Beach, Florida and Bethesda, Maryland, and is registered to vote in Florida. Indeed, when Plaintiff’s counsel first proposed that Defendant’s deposition should occur in Florida in the Parties’ September 2, 2024 meet and confer conference call, defense counsel actually offered to find a location for the deposition to occur in Florida.

All Plaintiff seeks from Defendant is a way for Plaintiff’s counsel to verify that there is any valid reason for Defendant’s deposition not to be held somewhere in the United States before trial. However, to date, Defendant has provided zero verifiable reasons why he is unable to travel to the United States between now and trial for his deposition. Indeed, Defendant has provided different excuses to Plaintiff and the Court. Consequently, if defense counsel is able to satisfy the Court and Plaintiff’s counsel of his claims that there is a valid basis as to why Defendant is unable to travel to the United States for his deposition, which so far he has been unable to do and has misled both the Court and Plaintiff on that issue multiple times, then and only then, will Plaintiff consider another location for the deposition, such as London or Paris. However, Plaintiff’s counsel is unwilling to propose alternative locations outside of the United States at this time. If defense counsel is unable to satisfy the foregoing concerns, then Plaintiff insists the deposition must occur in the United States.

All of the legal, equitable, safety, and practical factors outlined above are real-world considerations that must be taken into account and which the marketing pamphlets defense counsel provided as his “research” into the laws and procedures in Dubai do not address.

2. *Dispute No. 2: Defendant’s Responses to Plaintiff’s Requests for the Production of Documents (Sets Three and Four)*

On September 5, 2024, Defendant served only objections to Plaintiff’s Third Set of Requests for the Production of Documents, and in response to Plaintiff’s counsel’s

1 September 6, 2024 meet and confer email asking for confirmation that Defendant plans
2 to serve amended, substantive responses, no response from Defendant was received.
3 Moreover, Defendant's responses to Plaintiff's Fourth Set of Requests for the
4 Production of Documents were due to be served on September 20, 2024, however
5 Defendant failed to serve any timely responses or objections thereby waiving all
6 objections (see *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473
7 (9th Cir. 1992) ("Failure to object to discovery requests within the time required
8 constitutes a waiver of any objection"; FRCP 34.) As of the date of this correspondence
9 and despite defense counsel's promise to serve responses by end of day on Monday
10 September 23, 2024, Defendant has not served substantive, code-compliant responses
11 to either of these sets of discovery or any corresponding document production, and
12 therefore Plaintiff requests that the Court order Defendant to produce substantive
13 responses and responsive documents to Plaintiff's Third Set of Requests for the
14 Production of Documents, and substantive responses without any waived objections and
15 responsive documents, including copies of Defendant's passports between 2020 and the
16 present (as sought by Request No. 95) in response to Plaintiff's Fourth Set of Requests
17 for the Production of Documents.

18 **3. *Dispute No. 3: Plaintiff's Medical Records Production***

19 At his deposition Plaintiff identified his treating psychiatrist with respect to his
20 claimed emotional distress damages and then served a timely response to Defendant's
21 second set of Interrogatories further identifying this individual. In response to
22 Defendant's second set of Requests for the Production of Documents Nos. 18, 20, 21,
23 22, and 27, which sought production of medical records, Plaintiff provided a true and
24 code-compliant response which states that he does not have any such documents within
25 his possession, custody, or control, but that, to the extent they exist, Plaintiff believes
26 his medical providers would have such documents. As such, in order to obtain
27 documents from third parties that Plaintiff himself has affirmed he does not have in his
28 possession, custody, or control, Defendant must serve a Rule 45 subpoena on those third

1 parties, and Plaintiff has already confirmed in writing to defense counsel that when that
2 subpoena is served and timely notice is provided to Plaintiff, he will execute any
3 necessary HIPPA Authorization forms required to release such documents.

4 **4. *Dispute No. 4: Defendant's Rule 26 Disclosures***

5 Despite Defendant's repeated demands, and Plaintiff's compliance therewith, to
6 serve supplemental Rule 26 disclosures, Defendant had failed to do the same in response
7 to Plaintiff's repeated requests, which were initially discussed during the Parties'
8 September 2, 2024 meet and confer conference call, until Defendant finally produced
9 his Supplemental Rule 26 Disclosures on September 30, 2024. However, Defendant's
10 newly produced Supplemental Rule 26 Disclosures include never-before identified
11 witnesses, despite multiple specific discovery requests asking for Defendant to identify
12 all persons with knowledge of every aspect of this case, and new documents which
13 Defendant has not produced in this litigation yet. As such, Defendant should be
14 ordered to amend all applicable discovery responses to (1) properly identify all persons
15 with relevant knowledge of the various requested issue, and (2) to produce all
16 previously unproduced documents, to include all of the newly disclosed information
17 and documents in Defendant's Supplemental Rule 26 Disclosures.

18 **5. *Dispute No. 5: Plaintiff's Responses to Defendant's Third Set of***
19 ***Requests for the Production of Documents***

20 Defendant's Requests No. 30 and 31 seek for Plaintiff to produce all documents
21 "reflecting any and all calculations for the total amount of" (1) economic damages, and
22 (2) loss of book sales, attributable to this matter. Due to the fact that both of these
23 requests seek documents "reflecting any and all calculations" of Plaintiff's damages,
24 they are necessarily seeking only attorney work product and thus were properly
25 objectionable on that basis, particularly in light of the vagueness of each Request.
26 However, in response to various other Requests for the Production of Documents (Nos.
27 2, 12, 25, 29) which sought documents supporting Plaintiff's various damages claims,
28 Plaintiff produced all documents evidencing both economic damages and lost book

1 sales attributable to this matter that were in his possession, custody, or control.

2 **B. Defendant's Positions:**

3 **1. *Dispute No. 1: Defendant's Deposition and Court-Ordered***
4 ***Declaration***

5 On August 17, 2024, Defendant's counsel sent Plaintiff's counsel an e-mail and
6 notified him that pursuant to FRCP 56 that Defendant intended to bring a motion for
7 summary judgment and/or for summary adjudication of issues. (Exhibit "A") On
8 August 20, 2024, and while on vacation, Defendant's counsel sent an e-mail to
9 Plaintiff's counsel regarding discovery issues in this case and with a request for an IDC.
10 (Exhibit "B.") On August 27, 2024, and after Defendant's counsel had returned to his
11 office from vacation, he sent an e-mail to Plaintiff's counsel to try and set up a meet
12 and confer to discuss discovery issues in this case. (Exhibit "C") On August 27, 2024,
13 Defendant's counsel sent a second e-mail to Plaintiff's counsel and tried to set up a meet
14 and confer with Plaintiff's counsel to discuss discovery issues. (Exhibit "D") On August
15 30, 2024, Plaintiff's counsel had still not provided any dates for the meet and confer
16 requested by Defendant's counsel and Defendant's counsel requested that they meet
17 and confer the following Monday. (Exhibit "E")

18 On September 1, 2024, Defendant's counsel sent Plaintiff's counsel an e-mail
19 with their agenda for their meet and confer to occur the next day. Included in that agenda
20 was Defendant's deposition scheduling. (Exhibit "F") On September 4, 2024,
21 Defendant's counsel sent Plaintiff's counsel an e-mail requesting an IDC. In that e-mail
22 he confirms that Plaintiff's counsel insisted on an in-person deposition of Defendant
23 instead of a zoom deposition. (Exhibit "G") On September 6, 2024, Defendant's counsel
24 sent Plaintiff's counsel an e-mail and objected to the bad faith litigation tactic by
25 Plaintiff's counsel of failing and refusing to honor his extension agreements on due and
26 owing written discovery and for forcing Defendant to spend thousands of dollars
27 preparing objections to all of Plaintiff's pending discovery to protect his right to object
28 and to preserve objections based on privilege. (Exhibit "H.") On September 11, 2024,

1 Defendant's counsel notified Plaintiff's counsel that Defendant resided out of the
2 country and was available to attend his in-person deposition where he resided with an
3 offer from Defendant to pay all attorney's fees and costs except for time spent at his
4 deposition. (Exhibit "I")

5 On September 16, 2024, Defendant's counsel offered to produce Defendant for a
6 zoom deposition which would save all the parties and counsel time and costs.
7 Defendant's counsel also expressed concern about getting the deposition scheduled
8 because Defendant wanted to proceed with his motion for summary judgment. (Exhibit
9 "J")

10 On September 18, 2024, and after the court's IDC, Defendant's counsel was
11 contacted by e-mail by Plaintiff's counsel Abbe Lowell, Esq. twice at 8:00 p.m. and
12 three hours after the close of business with two requests that Defendant provide the
13 court in Defendant's Declaration with information the court did not order Defendant to
14 provide it. Defendant's counsel properly refused the request of Mr. Lowell because (1)
15 Mr. Lowell is not the Judge Magistrate in this case that issued the IDC order, (2)
16 Defendant's counsel is not employed by Mr. Lowell, and (3) Mr. Lowell was contacting
17 Defendant's counsel on a non-emergency basis in the evening long after the close of
18 business and when Defendant's counsel was trying to enjoy his time with his family.
19 Mr. Lowell personally attended the IDC hearing and had the opportunity to make his
20 requests to the court as to what was to be inserted in the court's IDC order.

21 On September 23, 2024, Plaintiff's counsel filed a request for IDC regarding
22 Defendant's deposition and Declaration. He claimed that the Declaration was defective
23 and not in compliance with the court's order because it did not contain all the contact
24 information required by the court and whether or not Defendant intended to appear at
25 trial. On September 24, 2024, Plaintiff's counsel only provided Defendant's counsel
26 with partial transcripts of the IDC hearing relating to the Declaration and refused to
27 provide the defense with a complete copy of the IDC transcript so the Declaration could
28 be corrected. On September 24, 20204, Defendant's counsel notified the court of

1 Plaintiff's counsel's refusal to promptly provide the defense with the entire transcript
2 of the IDC held on September 18, 2024, and he demanded that Defendant's counsel pay
3 him for one half of the transcript and only after personally receiving payment would he
4 send the defense the entire IDC transcript. (Exhibit "K".)

5 Defendant's counsel finally received the hearing transcript from Plaintiff's
6 counsel after waiting two more days. After reviewing the hearing transcript,
7 Defendant's counsel then prepared and caused Defendant to approve and sign his
8 revised Declaration dated September 30, 2024. In that Declaration, the Defendant added
9 the contact telephone number for the contact person. He also indicated that he did not
10 know if he would be back for trial and had not made that decision. These two errors in
11 the Declaration that were raised by Plaintiff's counsel were promptly corrected after
12 Plaintiff's counsel finally produced the entire hearing transcript. The court is requested
13 to file the Defendant's Declaration under seal pursuant to the Stipulation for Protective
14 Order dated August 9, 2024. (Exhibit "L")

15 The facts contained in the Declaration of Defendant are undisputed. He moved
16 and resides outside of the United States due to concerns for his personal safety based
17 on information he received from a foreign government official while in that country. He
18 does not know when he will return to the United States. He has agreed to submit to an
19 in-person deposition where he resides and has also agreed to pay for all the attorney's
20 fees and costs incurred by Plaintiff for that accommodation.

21 Attached as Exhibits "A" and "B" to Defendant's declaration are online
22 brochures published by two reputable and local court reporters confirming that there are
23 no laws where Defendant resides that would impede in any way the deposition of
24 Defendant from being taken where he resides. Plaintiff's counsel has offered no
25 evidence or even any law that prohibits or impairs Defendant's deposition from being
26 taken where he resides. Defendant also agrees that the Federal Rules of Civil Procedure
27 and Federal Rules of Evidence apply to his deposition and the transcript and videotape
28 of it can be used at trial subject to any proper objections made at the deposition that will

1 need to be ruled on by the court during the pretrial conference.

2 There are daily nonstop airline flights to where our client resides. The return
3 flights are also nonstop. There is no need to make any aircraft stops. The court's ruling
4 in the case of In Re Outsidewall Tire Litig. (ED Vir. 2010) 267 F.R.D. 466, 471-472
5 indicates that the Defendant's preference to be deposed where he resides is appropriate
6 except under exceptional circumstances. The court in that case did indicate that the court
7 could consider factors such as the cost of travel, access to the court if there is a discovery
8 dispute and time to travel.

9 Plaintiff proposes alternatively London, England and Paris, France as locations
10 to take the deposition of Defendant. Plaintiff offers no dates or times for when this
11 deposition is to be taken although his counsel has been repeatedly requested Plaintiff's
12 counsel provide that information. Plaintiff's objections to taking the deposition of
13 Defendant where he resides due to attorney's fees incurred, costs incurred, time
14 travelling, lack of access to the court here if there is a discovery dispute, and personal
15 safety of all attending due to terrorism in that region of the world also apply equally to
16 having Defendant's deposition taken in London, England, Paris, France, or anywhere
17 else for that matter. There is a current safety advisory worldwide that is applicable to
18 travel to Europe and there are safety concerns applicable to travel to Europe due to the
19 current Middle East conflict. Plaintiff has not even offered to pay for any attorney's
20 fees, accommodations, and travel costs Defendant and his counsel would incur to travel
21 to Europe and back or anywhere else to attend Defendant's deposition.

22 The Exhibit "7" rules that Plaintiff's counsel heavily relies on that are published
23 by the Bird law firm, (an excellent commercial litigation firm), are not helpful. The
24 Hague Convention Rules and other rules cited in Exhibit "7" are not relevant or of any
25 concern because the deposition is not being taken of a foreign citizen where Defendant
26 resides and this case does not involve foreign litigation and involvement of the courts
27 where Defendant resides.

28 Plaintiff offers no law, facts or argument relating to the viability of taking

1 Defendant's deposition by zoom. Plaintiff does not indicate at all whether this court has
2 authority to order Defendant's zoom deposition. As was previously mentioned,
3 Defendant has agreed to submit to a zoom deposition. He also agrees that the Federal
4 Rules of Civil Procedure and Federal Rules of Evidence will apply to his zoom
5 deposition. He also agrees that the transcript and videotape of his deposition can be used
6 at trial subject to any proper objections made during the deposition that will need to be
7 ruled on by the court during the pretrial conference.

8 Defendant agreed to take Plaintiff's zoom deposition at the request of Plaintiff
9 and counsel. Plaintiff then submitted to a zoom deposition. Counsel and the parties
10 saved thousands and thousands of dollars by having Plaintiff's deposition taken by
11 zoom. There is no reasonable excuse for the prolonged failure and refusal of Plaintiff's
12 counsel to make the same courtesy available to Defendant and to agree to take his
13 deposition by zoom. The court has the legal authority order that Defendant's deposition
14 be taken by zoom.

15 Under Federal Rule of Civil Procedure 30(b)(4), this court has the legal authority
16 to order that a deposition be taken by telephone or other remote means. The court can
17 order a remote deposition be taken when there is good cause for an order to depose by
18 remote means. (*Estate of Gerasimenko v. Cape Wind Trading Co.* (SD NY 2011) 272
19 FRD 385, 390-394.) A desire to save money constitutes good cause to depose out of
20 state witnesses by remote means. The burden is on the opposing party to show how they
21 would be prejudiced. (*Cressler v. Neuenschwander* (D KS 1996) 170 FRD 20, 21.) The
22 court favorably approved in United States v. Fargesen (SDNY 2022) 2022 U.S. Dist.
23 LEXIS 203103; 2022 WL 166647005 the taking of the depositions of witnesses that
24 reside where Defendant resides using a videoconferencing procedure such as zoom.

25 Plaintiff has known for almost two months that Defendant intends to proceed
26 with a motion for summary judgment. The failure and refusal of Plaintiff to act in good
27 faith and to proceed with the deposition of Defendant using the same remote deposition
28 zoom procedure that Defendant used to take Plaintiff's deposition almost two months

1 ago and instead with the use multiple excessive obtuse e-mails and IDCs to stall and
2 delay the taking of Defendant's deposition is nothing but a litigation tactic that is
3 designed to try and oppose Defendant's motion for summary judgment that will not be
4 successful because this case has been pending for almost one year.

5 ***Dispute No. 2: Defendant's Responses to Plaintiff's Requests for the***
6 ***Production of Documents (Sets Three and Four)***

7 Defendant will be providing responses without objection to Plaintiff's Requests
8 for Production of Documents Sets Four before the IDC hearing and will bring his
9 production of documents to the hearing. Defendant was forced to timely object to
10 Plaintiff's Third Request to Produce because Plaintiff's counsel withdrew his agreement
11 extending the time to respond to all discovery. (Exhibit "H") Defendant is requesting
12 that during the IDC hearing that the court order counsel to have a meet and confer on
13 the Plaintiff's Third Request to Produce at the courthouse cafeteria because no such
14 meet and confer has occurred as required by the local rules and counsel can then confirm
15 to the court the results of that meet and confer and the court can make any appropriate
16 rulings to resolve the matter.

17 ***Dispute No. 3: Plaintiff's Medical Records Production***

18 Defendant seeks the production of Plaintiff's medical records and bills in his
19 Second Request to Produce at requests 18, 20, 21, 22 and 27 because they are needed
20 by his expert to conduct Plaintiff's IME on October 11, 2024. There is no dispute that
21 the medical records of Plaintiff can be sought with a request to produce but Plaintiff
22 simply contends that his medical records are not in his possession, custody or control
23 and must be sought by a subpoena which is ridiculous because Plaintiff must sign a
24 HIPPA consent before his medical records can be produced by his doctor so all
25 requested documents should be ordered produced by Plaintiff on Monday October 7,
26 2024 by personal delivery to Defendant's counsel's office by Plaintiff to ensure
27 Defendant's IME expert can receive and use them before October 8, 2024 to prepare
28 for the Plaintiff's IME which is scheduled to be held on October 11, 2024.

Dispute No. 4: Defendant's Rule 26 Disclosures

This issue is nothing but litigation strategy and tactics by Plaintiff. Plaintiff does not identify what witnesses and documents on Defendant's recent Rule 26f disclosures are new and he knew nothing about them until he received Defendant's disclosures or even any law that requires Defendant to provide amended responses to Plaintiff's written discovery requests and the identification of the specific discovery requests by set and number that require amended responses. The reason Plaintiff does not reveal that information to the court is because Plaintiff already is aware of and has the information Defendant disclosed in his recent Rule 26f disclosures and the court cannot order Defendant to supplement his discovery responses with information plaintiff already has in his possession, custody and control such as his book and witnesses that he has sued in other pending litigation and/or for which Plaintiff did not request such disclosed information from Defendant.

Dispute No. 5: Plaintiff's Responses to Defendant's Third Set of Requests for the Production of Documents

Plaintiff objected to requests 30 and 31 in Defendant's Third Set of Requests to Produce on the ground that the information sought relating to his damages calculations and Plaintiff claims that information is protected by the attorney-client and work product privileges. Plaintiff did not produce a detailed privilege log of those documents and should be ordered to produce a detailed privilege log of those documents. Then Defendant can then bring a motions in limine to preclude Plaintiff from using those "privileged" documents listed in detail on his privilege log, the information contained in them, or even referring to them during the trial of this case because a privilege objection cannot be used to hide evidence during discovery and then waived on the eve of trial to now use that privileged information at trial to unfairly sandbag the Defendant

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2 Dated: October 2, 2024

EARLY SULLIVAN WRIGHT GIZER
& MCRAE LLP

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4
5 By: /s/ Zachary C. Hansen
6 BRYAN M. SULLIVAN (State Bar No.
7 bsullivan@earlysullivan.com 209743)
8 ZACHARY C. HANSEN (State Bar No. 325128)
9 zhansen@earlysullivan.com
10 EARLY SULLIVAN WRIGHT GIZER &
11 McRAE LLP
12 6420 Wilshire Boulevard, 17th Fl.
13 Los Angeles, California 90048
14 Telephone: (323) 301-4660
15 Facsimile: (323) 301-4676

16
17 PAUL B. SALVATY (State Bar No.
18 171507)
19 PSalvaty@winston.com
20 WINSTON & STRAWN LLP
21 333 S. Grand Ave., 38th Fl.
22 Los Angeles, CA 90071-1543 Telephone:
23 (213) 615-1700 Facsimile: (213)
24 615-1750

25
26 ABBE DAVID LOWELL (*pro hac vice*
27 forthcoming)
28 AbbeLowellPublicOutreach@winston.com
WINSTON & STRAWN LLP
1901 L St., N.W.
Washington, D.C. 20036-3508
Telephone: (202) 282-5000 Facsimile:
(202) 282-5100

*Attorneys for Plaintiff Robert Hunter
Biden*

1 Dated: October 2, 2024

LAW OFFICES OF MICHAEL C.
MURPHY

2
3 /s/ Michael C. Murphy

4 Michael C. Murphy, Esq.
5 Michael C. Murphy, Jr., Esq.
6 *Attorneys for Defendant,*
7 *Patrick Byrne*
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